

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:07-cr-00374-RK
	)	
CHARLES L JOHNSON,	)	
	)	
Defendant.	)	

**ORDER**

Before the Court is Defendant's pro se motion for appointment of counsel and to "have [his] sentence vacated." (Doc. 118.) On August 23, 2021, the Court revoked Defendant's supervised release and sentenced him to a 21-month term of imprisonment. (Doc. 110.) Defendant did not appeal his revocation.

The Court revoked Defendant's term of supervised release and imposed the instant term of imprisonment following several sweat patch results that tested positive for marijuana. At the revocation hearing, Defendant stipulated that the Government had sufficient evidence to prove the violations set forth in the underlying violation reports (including unlawful use of a controlled substance) as well as a 21-month term of imprisonment. In the instant motion, Defendant raises two arguments for relief: (1) the sweat patches that gave rise to the positive marijuana tests underlying his supervised release revocation have been "discontinued and [have] proven faulty," and (2) the State of Missouri has decriminalized use of recreational marijuana and "the federal system is seeking to also legalize marijuana." (Doc. 118.) Defendant asks that he be retried for the violation or "have [his] sentence vacated." (*Id.*)

Defendant's motion is functionally a motion for post-conviction relief under 28 U.S.C. § 2255. Section 2255 provides an avenue for a defendant in federal custody (including after revocation of supervised release) to challenge the legality of the conviction and sentence. *See* § 2255(a) (setting forth four grounds for post-conviction relief); *Jackson v. Fisher*, No. 11-2670 (JNE/JSM), 2011 WL 5593659, at \*2 (D. Minn. Oct. 6, 2011), *adopted by Jackson-Bey v. Fisher*, No. 11-2670 (JNE/JSM), 2011 WL 5598352 (D. Minn. Nov. 17, 2011), *aff'd*, No. 12-1212, 2012 WL 13228481 (8th Cir. Mar. 23, 2012) (holding that revocation of supervised release and subsequent term of imprisonment reviewable by § 2255 motion) (collecting cases).

In *Morales v. United States*, 304 F.3d 764 (8th Cir. 2002), the Eighth Circuit held that “before a district court may reclassify a pro se litigant’s pleading as a § 2255 motion, [the court] must warn him of the consequences of the reclassification and allow him an opportunity to withdraw his pleading.” *Id.* at 765. Based on the substance of Defendant’s pro se motion, the Court intends to construe it as a motion to vacate under § 2255. Accordingly, Defendant is informed that:

- (1) a one-year statute of limitations applies to motions for relief under § 2255, which runs from the latest of the date on which the judgment became final; an unlawful impediment to the filing of the motion by governmental action was removed; a retroactively applicable right newly recognized by the Supreme Court; and on which supporting facts could have been discovered with due diligence, § 2255(f); and
- (2) second or successive motions for relief under § 2255 may only be filed with approval of the Court of Appeals and under limited circumstances, § 2255(h).

At this juncture, Defendant must either withdraw his November 14, 2022 pleading or consent to reclassification as a motion for relief under § 2255. To consent, Defendant must fill out and return the provided form Motion to Vacate, Set Aside, or Correct a Sentence By a Person in Federal Custody (Motion under 28 U.S.C. § 2255), to be mailed with a copy of this order. Defendant’s written response – whether in the form of the returned § 2255 motion or a statement to withdraw the November 14, 2022 filing – is due February 7, 2023. If Defendant fails to respond or does not consent to reclassification of his November 14, 2022 filing as a motion for relief under § 2255, the Court will dismiss the pleading without prejudice.

The Clerk’s Office is directed to send a copy of this order (and a form § 2255 motion) to:

Charles L. Johnson, No. 20405-045  
MCFP Springfield  
Federal Medical Center  
P.P. Box 4000  
Springfield, MO 65801

**IT IS SO ORDERED.**

s/ Roseann A. Ketchmark  
ROSEANN A. KETCHMARK, JUDGE  
UNITED STATES DISTRICT COURT

DATED: January 17, 2023